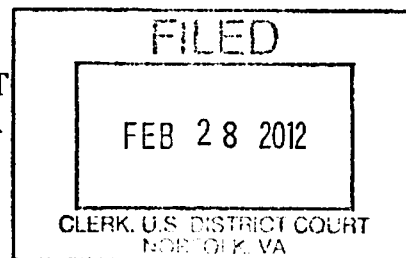


**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**



**LEXON INSURANCE COMPANY,**

Plaintiff,

v.

Civil Action No.: 2:11cv600

**AMERICAN TURF GRASS  
CORPORATION, et al.,**

Defendants.

**FINAL ORDER**

THIS MATTER is before the Court on the Joint Motion for Entry of a Final Order filed on behalf of (1) the plaintiff, Lexon Insurance Company ("Lexon"), and (2) the defendants (a) Asphalt Roads & Materials Co., Inc., (b) Damuth Services, Inc. d/b/a Damuth Trane, (c) E.G. Middleton, Inc., (d) Ferguson Enterprises, Inc., (e) Halsey Design Group, Inc., (f) TCS Materials, Inc., (g) Vulcan Construction Materials, LP., (h) Jeff Ball, and (i) Barry Jones. By their motion, the parties advise that they have settled their differences and request distribution of the funds available under the Reinsurance Agreement for a Miller Act Payment Bond currently being held by the Clerk of this Court.

Based upon the representations of counsel and a review of its file, and appearing otherwise proper to do so, the Court makes the following findings of fact and conclusions of law.

**A. BACKGROUND AND CURRENT STATUS.**

On November 9, 2011, Lexon filed its Complaint to Interplead Funds (the "Complaint"). By its Complaint, Lexon acknowledges that it serves as a reinsuring company for Western Insurance Company ("Western Insurance") under a Reinsurance

Agreement for a Miller Act Payment Bond dated June 23, 2008 up to the maximum limit of \$155,653.36 in connection with the construction and/or renovation of Sea Mist RV Park at the Dam Neck Annex, Oceana Naval Air Station in Virginia Beach, Virginia, Contract No. NAVMWR-08-0012 (the "Sea Mist Project"). The Reinsurance Agreement for a Miller Act Payment Bond was issued in order to enable Western Insurance to qualify as a surety under a contract payment bond for the Sea Mist Project which it issued naming Key Turf Construction, Inc. ("Key Turf Construction") as its principal and co-obligor, and the United States of America as its obligee (Bond No. OBC00015). As a result of Key Turf Construction's failure to satisfy its labor and material payment obligations, and Western Insurance's failure to pay the claims asserted against the contract payment bond, there was a default under the contract payment bond triggering Lexon's obligation under the Reinsurance Agreement for a Miller Act Payment Bond. The Reinsurance Agreement for a Miller Act Payment Bond is attached to the Complaint as Exhibit B.

Lexon initially received claims from a number of Key Turf Construction's subcontractors, laborers and/or materialmen, and identified other persons who potentially qualify as claimants, and has determined that the claims of all such persons collectively total \$424,692.43, an amount which exceeds the \$155,653.36 amount available under the Reinsurance Agreement for a Miller Act Payment Bond. As a result and in accordance with the Court's Order entered on November 21, 2011, Lexon deposited with the Clerk the \$155,653.36, the limit of its liability under the Reinsurance Agreement for a Miller Act Payment Bond (the "Interpled Funds").

**B. DEFENDANTS PROPERLY BEFORE THIS COURT**

Defendants (a) Asphalt Roads & Materials Co., Inc. ("Asphalt Roads"), (b) Damuth Services, Inc. d/b/a Damuth Trane ("Damuth Services"), (c) E.G. Middleton, Inc. ("E.G. Middleton"), (d) Halsey Design Group, Inc. ("Halsey Design"), (e) TCS Materials, Inc. ("TCS Materials"), (f) Vulcan Construction Materials, LP. ("Vulcan Construction"), (g) Jeff Ball, and (h) Barry K. Jones have all filed responsive pleadings to the Complaint and are properly before the Court.

**C. DEFENDANT WHICH HAS DISCLAIMED ITS INTEREST**

The defendant, Ferguson Enterprises, Inc. ("Ferguson Enterprises"), filed its Answer and has disclaimed any interest in the Interpleaded Funds. Therefore, the Court FINDS and ORDERS that Ferguson Enterprises shall not share in any distribution of the Interpleaded Funds, is DISMISSED with prejudice as a party defendant.

**D. DEFENDANTS WHICH ARE IN DEFAULT**

On November 30, 2011, Lexon filed its Request for Entries of Default as to defendants (1) American Turf Grass Corporation ("American Turf"), (2) Eastern Shore Development Corporation ("Eastern Shore"), (3) Eastville Investments, LLC ("Eastville Investments"), (4) Erosion Control Services LLC ("Erosion Control"), and (5) Shore Paving LLC ("Shore Paving"). On January 6, 2011, the Clerk of Court entered default as to each of these defendants, and no motions for leave to file late responsive pleadings or to set aside the entries of default have been filed. Therefore the Court FINDS and ORDERS that the defendants (1) American Turf, (2) Eastern Shore, (3) Eastville Investments L, (4) Erosion Control, and (5) Shore Paving are in DEFAULT, shall not be

entitled to share in any distribution of the Interpled Funds, and are hereby DISMISSED as parties defendant.

E. THE DISTRIBUTION OF FUNDS

The Court is advised that the remaining parties have resolved their differences and agree that the Interpled Funds should be distributed among them in the manner set forth below. All parties agree that Lexon has incurred attorney's fees, costs and expenses, a portion of which should be satisfied from the Interpled Funds. The Court also notes that, as directed by Order entered on November 21, 2011, the Clerk deposited \$155,653.36 into an interest bearing money market account at SunTrust Bank in the City of Norfolk, Virginia. The Court, therefore, CONFIRMS the parties' settlement and ORDERS that the Clerk distribute the funds available under the Reinsurance Agreement for a Miller Act Payment Bond in the following manner:

<u>Payee</u>	<u>Distribution of Principal</u>
Asphalt Roads & Materials Co., Inc. Federal Tax ID # xxx Claim and Interest = 18% of Total	\$27,046.30
Damuth Services Inc., d/b/a Damuth Trane Federal Tax ID # xxx Claim and Interest = 9% of Total	\$14,420.20
E.G. Middleton, Inc. Federal Tax ID # xxx Claim and Interest = 52% of Total	\$79,367.00
Halsey Design Group, Inc. Federal Tax ID # xxx Claim and Interest = 3% of Total	\$3,909.43
TCS Materials, Inc. Federal Tax ID # xxx Claim and Interest = 3% of Total	\$4,390.87

Vulcan Construction Materials, LP Federal Tax ID # xxx Claim and Interest = 1% of Total	\$2,021.37
Jeff Ball Social Security Number : xxxx Claim and Interest = 10% of Total	\$15,421.25
Barry Jones Social Security Number : xxxx Claim and Interest = 4% of Total	\$6,576.94
Lexon Insurance Company Federal Tax ID # xxxx Attorneys' fees, costs and expenses	\$2,500.00
<b>Total</b>	<b>\$155,653.36</b>

The Court observes that interest has been accruing on the principal sum of \$155,653.36 since its deposit in accordance with the Order entered on November 21, 2011. The Clerk is hereby DIRECTED to apportion the interest accrued on that sum to each of the parties based upon the *pro rata* distribution of the principal as identified above, after deduction of the appropriate assessment fee of 10% of the interest, which sum shall be payable to the Clerk.

The Clerk is DIRECTED to send the checks to the various parties to the following persons:

<u>Payee</u>	<u>Send Check To</u>
Asphalt Roads & Materials Co., Inc.	Dawn L. Serafine, Esquire TROUTMAN SANDERS LLP 150 W. Main Street Suite 1600 Norfolk, VA 23510

Damuth Services Inc., d/b/a Damuth Trane

Kevin J. Cosgrove, Esquire  
HUNTON & WILLIAMS  
500 E. Main Street  
Suite 1000  
Norfolk, VA 23510

E.G. Middleton, Inc.

Dawn L. Serafine, Esquire  
TROUTMAN SANDERS LLP  
150 W. Main Street  
Suite 1600  
Norfolk, VA 23510

Halsey Design Group, Inc.

David W. Lannetti, Esquire  
VANDERVENTER BLACK LLP  
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TCS Materials, Inc.

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Vulcan Construction Materials, LP

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Jeff Ball

Gregory L. Sandler, Esquire  
EPSTEIN, SANDLER & FLORA, P.C.  
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Virginia Beach, VA 23452

**Lexon Insurance Company**

**Richard T. Pledger, Esquire**  
**WALLACE PLEDGER, PLLC**  
**The Capstone Center**  
**7100 Forest Avenue**  
**Suite 302**  
**Richmond, VA 23226**

**This order is FINAL.**

ENTER this 28 day of February, 2012.

  
United States District Court Judge

We ask for this:



Richard T. Pledger (VSB No. 28102)

Thomas J. Moran (VSB No. 71296)

Christopher A. Cheuk (VSB No. 70891)

WALLACEPLEDGER, PLLC

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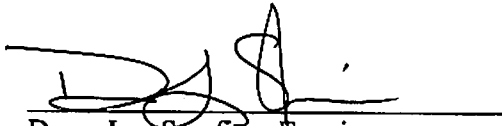
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*and*

*Counsel for E.G. Middleton, Inc.*



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Kevin Joseph Cosgrove, Esquire

HUNTON & WILLIAMS

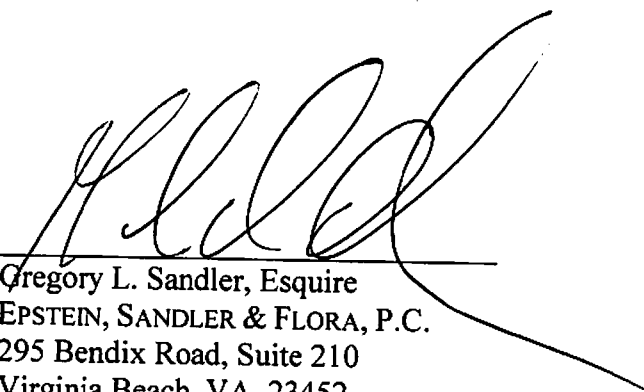
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*Pro Se*

Reviewed by  
Financial Deputy

Rbasypa 2/21/12  
Name Date